vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3630 OF 2003
IN
SUIT NO.918 OF 2002

ICICI Bank Ltd. ... Plaintiff

V/s.

Shri Ishar Alloys Steels Ltd. & Ors. ... Defendants

And

M/s.N.S. Trading company ... Applicant

Ms.Anjali Helekar for Applicant
Mr.P.K. Saxeria with S.Rasal for Plaintiffs
Ms.Rekha Tawade for Defendant No.2
Mr.K.Parekh for IDBI
Ms.S.Srikrishna with Ravella D'souza for Defendant No.9
Ms.U.Srivastava for Defendant No.16

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 18, 2006**

P.C.:

. This Motion seeks modification of the order dated 18.4.2002 passed in the Notice of Motion NO.1027 of 2002. By order dated 18.4.2002, this Court had appointed a Receiver in respect of the properties mentioned in Exhibits A-1, A-2, B-1, B-2 and C annexed to the plaint. It is the case of the applicant that the property mentioned in Exhibit A2 is not owned by Defendant No.1 but belongs to the applicant; the applicant having entered into a tripartite agreement with City and Industrial Development Corporation (for short, hereinafter referred to as 'CIDCO') and Defendant No.1. According to the applicant, it has paid consideration in respect of the property mentioned in

Exhibit A2 by which the property was transferred to it. The CIDCO agreed to allow such transfer and, therefore, by the tripartite agreement on 19.9.2002 the property was leased out to the applicant. It is, therefore, prayed that the Court Receiver appointed should not continue to act in respect of this property.

2. The learned Counsel appearing for the Applicant submits that all the documents in respect of the suit property mentioned in exhibit A2 are registered. The applicant is a bonafide lessor of that property, having paid due consideration. She therefore urges that the order of 18.6.2002 appointing the Court Receiver in respect of the property mentioned in Exhibit A2 be vacated.

3. The learned Counsel appearing for the Plaintiffs points out that an English mortgage was created in their favour in respect of this property by Defendant No.1 a copy of which document is annexed to the plaint. The plaintiffs are the trustees and debenture holders and it is for this reason that they have entered into an agreement whereby the property was mortgaged by Defendant No.1 under the English mortgage. Therefore, according to the learned Counsel, the only right if at all the applicant would have is an equity of redemption of the mortgage, which right could be purchased by the applicant. That being the position, the prayer for

discharge of the Court Receiver cannot be granted at the interim stage unless the applicant who at the highest, according to the learned Counsel, is a mortgagor redeems the mortgage under section 59A of the Transfer of Property Act. The learned Counsel then brings to my notice the fact that the documents which are which are relied on by the applicant are not registered which is a prerequisite in respect of sale of immovable properties. Furthermore, it is pointed out that only the proprietor of the applicant has admitted execution of the document before the Sub-Registrar, Uran. In the affidavit in reply to the Motion, it is stated that when the Court Receiver visited the premises on 18.6.2002, he was informed by one Atul Saxena that Defendant No.1 had leased the property to Sharma Heavy Lifters since the past four years. A Chamber Summons was taken out being Chamber Summons No.822 of 2002 for a direction against the Court Receiver to forthwith take possession of the suit properties mentioned in the Exhibits aforesaid including A2. It appears that the husband of the Proprietor of the present applicant-Company filed a reply stating that Sharma Heavy Lifters had taken the suit premises on rent from the applicant herein. All these factors, according to the learned Counsel, indicate that the transaction is not genuine.

4. After considering the arguments advanced by the learned Counsel for the parties, I am of the view that no relief can be granted in this Motion. The order

which is sought to be modified was passed on 18.6.2002. The documents relied on by the applicant for establishing that the property is now leased to it are of 19.9.2002. Therefore, in my opinion, Defendant No.1 had no right to deal with the property once the Receiver had been appointed. Assuming such a right existed, at best, it would mean that the mortgagor of the property would now be the Applicant, an English mortgage having already been created by Defendant No.1 in favour of the Plaintiff. In such circumstances, the relief claimed in the Motion cannot be granted. Motion dismissed.

5. At the request of the learned Advocate for the Applicant, the ad-interim relief granted earlier shall continue for a period of four weeks from today.